

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 8648 of 1998

For Approval and Signature:

Hon'ble MR.JUSTICE D.C.SRIVASTAVA

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

NATHABHAI JIVRAJBHAI VAGHASIA

Versus

STATE OF GUJARAT

Appearance:

M/S THAKKAR ASSOC. for Petitioner
GOVERNMENT PLEADER for Respondent No. 1
MR BHARAT T RAO for Respondent No. 4

CORAM : MR.JUSTICE D.C.SRIVASTAVA

Date of decision: 12/03/99

ORAL JUDGEMENT

In this writ petition under Article 226 of the Constitution of India, the petitioner has challenged the order of detention dated 9.9.1998 passed by the District Magistrate, Rajkot under section 3(2) of the Prevention of Black Marketing and Maintenance of Supplies of Essential Commodities Act and has prayed that the said order be quashed and set aside and the petitioner be

released forthwith from illegal detention.

2. It appears from the grounds of detention (Annexure "A" to the petition) that the petitioner was found engaged in black marketing activity in edible oil an essential commodity. The details of the grounds of detention are not necessary to be incorporated in this judgment for the obvious reason that the gross negligence of the Central Government has rendered the entire exercise done by the detaining authority, advisory board and the State Government illusory and has set at naught the entire exercise to the benefit of the petitioner. In the face of the two affidavits filed on behalf of the Central Government, any amount of censure will be insufficient to protect the callousness on the part of the Central Government in dealing with the various representations sent by the detenu and his advocate. This unexplained delay in dealing with the representations itself is a ground for quashing the order of detention. Hence, no other ground is required to be considered for deciding this writ petition.

3. Affidavit of Shri A.L.Makhijani, Under Secretary in the department of Consumer Affairs, Ministry of Food & Consumer Affairs, New Delhi admits that one representation dated 22nd September, 1998 made by the advocate for the detenu and the another representation dated 25.9.1998 were received in the concerned section of the Central Government on 25.9.1998 and 28.9.1998 respectively. Parawise comments were called on these two representations through telegram dated 28.9.1998. The third representation dated 25.9.1998 was received on 7.10.1998. Parawise comments thereon were again called through telegram dated 7.10.1998. Reminders were sent to the State Government for sending the parawise comments on 15.10.1998 and 20.10.1998. Parawise comments on representations dated 22.9.1998 and 25.9.1998 were received on 29.10. 1998 and the parawise comments on the third representation dated 25.9.1998 were received on 13th November, 1998. The affidavit of Shri Makhijani was sworn on 13th November, 1998. It is admitted in this affidavit that the case of the petitioner was being examined for disposal of representation in consultation with the concerned technical authorities and the laboratory reports received from the State Government have been sent to the technical authorities for analysis and decision will be taken at the earliest. This admission signifies that till 13th November, 1998, these representations were not disposed of though parawise comments were received from the State Government on 29.10.1998 and 3.11.1998. No explanation is given in

this affidavit as to what was the necessity for obtaining the second report from the laboratory when the reports from the State Laboratory were already sent by the State Government alongwith its report.

Then comes the affidavit of Shri A. L. Makahijani, sworn on 24th November, 1998 in which it is stated that the representations were rejected on 25th December, 1998 after verifying the laboratory reports received from the State Government and the concerned technical authorities. In these two affidavits, curiously enough, it is not disclosed when the second opinion was sought and what was the date on which such second opinion was sought nor it is disclosed when the second report from the technical authorities was received by the Central Government. This delay between 29.10.1998 in the first instance and 3.11.1998 in the second instance and in between these two dates and 20th December, 1998 has not at all been explained by the Central Government. This inordinate delay in disposal of the representation by the Central Government without any justification has not only set at naught the entire exercise undertaken by the detaining authority, advisory board and the State Government but has also rendered the detention and the continued detention of the detenu illegal inasmuch as it is violative of the fundamental right guaranteed under Article 22 (5) of the Constitution of India. On account of such hopeless lethargy and unexplained delay and the callousness on the part of the Central Government, there is no option but to quash and set aside the impugned order of detention.

The writ petition is, therefore, allowed. The impugned order of detention dated 9.9.1998 is hereby quashed and set aside. The petitioner-detenu shall be released forthwith unless he is required in some other case.

12.3.1999. (D.C.Srivastava,J.)

Vyas